

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760/fax. 415-460-9762
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

June 17, 2015

David Vaccarezza – Owner/Operator,
President, and Registered Agent
California Waste Recovery Systems, Inc.
DKCR Properties, Inc.
175 Enterprise Court / Suite A
Galt, California 95632

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Mr. Vaccarezza, California Waste Recovery Systems, Inc., and DKCR Properties,
Inc.:

NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”) 33 U.S.C. §1251 *et seq.*, that River Watch believes are occurring at the Galt recycling and Materials Recovery Facility owned and operated by California Waste Recovery Systems, Inc. (“Galt MRF”) located at 175 Enterprise Court in Galt, California. Notice is being sent to you as the responsible owners, operators, and managers of the Galt MRF and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Galt MRF into Deadman Gulch.

CWA §505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the state in which the violations occur.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Galt MRF. Consequently, David Vaccarezza, California Waste Recovery Systems, Inc. and DKCR Properties, Inc. (collectively, the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System (“NPDES”) permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA §301(a), §402(p), and §505(a)(1), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the Central Valley (5S) Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA §402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (the General Permit) relating to the recycling services and operations at the Galt MRF.

The Discharger filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about February 25, 2013, and the Discharger was assigned Waste Dischargers Identification (“WDID”) number 5S34I024099. River Watch contends that in the operation of the Galt MRF, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate Storm Water Pollution Prevention Plan (“SWPPP”), the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

Compliance with the monitoring and reporting program is central to the effectiveness of the General Permit program. River Watch contends the Discharger, however, has failed and is failing to comply with the following General Permit requirements as detailed in the Annual Reports submitted in reporting year 2013-2014:

a. Sampling and Analysis Results Were Incorrectly Provided in the 2013-2014 Annual Report

The Annual Report form, in the Section titled *Specific Information*, “Monitoring and Reporting Program,” E. Sampling and Analysis Results, identifies the following violation:

Subparagraph 4 specifically questions: “For each storm event sampled, did you collect and analyze a sample from each of the facility’s storm water discharge locations?” Subparagraph 5 specifically questions: “Was sample collection or analysis reduced in accordance with Section B.7.d of the General Permit?” ... and ... “If YES, **attach documentation** supporting your determination that two or more drainage areas are substantially identical.” The Discharger checked the “No” box for Subparagraph 4 on the Annual Report form, confirming that it only sampled from two of four storm water discharge locations at the Galt MRF (4 discharge locations are stated under Subparagraph 3). The Discharger, however, checked the box “Yes” for Subparagraph 5 on the Annual Report form, asserting that the sample collection or analysis was reduced as two or more drainage areas are substantially identical, but fails to provide the required “documentation.”

b. SWPPP and Monitoring Program Requirements Were Not Properly Prepared and Implemented in the 2013-2014 Annual Reporting Year

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” H. ACSCE Checklist, Subparagraph 2, asks “Have you reviewed your SWPPP to assure that its BMPs address existing potential pollutant sources and industrial activities areas?” Assuming the Discharger has prepared a SWPPP, it fails to ensure that the BMPs address the elimination of the full spectrum of pollutant discharges alleged in paragraph c. below.

c. Noncompliance with General Permit Storm Water Controls in the 2013-2014 Annual Reporting Year

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” I. ACSCE Evaluation Report, requires “[t]he facility operator ... to provide an evaluation report that includes ... any incidents of non-compliance and the corrective actions taken.” The Discharger allegedly failed and is failing to eliminate the reported ongoing discharges from the Galt MRF that exceed the EPA “Benchmarks” and applicable California Toxics Rule (“CTR”) limitations for the following pollutants and provides no statement of “corrective actions taken”:

2013-2014 Reporting Year

November 20, 2013 Sample

Discharge Location – “MP#1 Curb Cut”

Iron – 4.91 mg/L

Aluminum – 3.0 mg/L

Zinc – 0.32 mg/L

Chemical Oxygen Demand (COD) – 160 mg/L

Discharge Location – “MP#3 Catch Basin”

Iron – 6.93 mg/L

Aluminum – 4.4 mg/L

Zinc – 0.27 mg/L

COD – 140 mg/L

Total Suspended Solids (TSS) – 150 mg/L

March 10, 2014 Sample

Discharge Location – “MP#1 Curb Cut”

Aluminum – 0.8 mg/L

Iron – 1.18 mg/L

Discharge Location – “MP#3 Catch Basin”

Zinc – 0.22 mg/L

Iron – 5.19 mg/L

Aluminum – 3.7 mg/L

TSS – 109 mg/L

d. Certification of Compliance With General Permit in the 2013-2014 Annual Reporting Year

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” J. ACSCE Certification requires facilities covered under the General Permit to state “[b]ased on your ACSCE, do you certify compliance with the Industrial Activities Storm Water General Permit?” The alleged failures to fully and accurately ensure compliance with the requirements of the

General Permit as detailed above contradicts both the ACSME Certification” and the signed “Annual Report Certification,” which provides that the signer of the Annual Report attests that the “information submitted is, to the best of my knowledge and belief, true, accurate and complete.”

2. *The activity alleged to constitute a violation.*

The Discharger’s scrap recycling operations (classified under SIC Code 5093; and additional operations identified under SIC Code 4212 (“Local Trucking without Storage”)) include the collection of various types of “paper and cardboard,” “plastics,” “can and cartons,” and “glass” (<http://cal-waste.com/wp-content/uploads/2014/10/Recyclables-List-Commercial.pdf>; June 9, 2015). The work at the Galt MRF is conducted both indoors and outdoors. Because the real property on which the Galt MRF is located is subject to rain events, and because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, there can be an unlawful discharge of these pollutants from the Galt MRF through channels that flow into Deadman Gulch, which flows to the Cosumnes River and the Sacramento-San Joaquin River Delta.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain a proper exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit for the Galt MRF, but fails to comply with its environmentally protective requirements, in particular the implementation of effective BMPs.

3. *The person or persons responsible for the alleged violation.*

The persons and entities responsible for the alleged violations are David Vaccarezza, California Waste Recovery Systems, Inc. and DKCR Properties, Inc., referred to collectively herein as the Discharger.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Galt MRF at 175 Enterprise Court in Galt, California, including the waters of Deadman Gulch, the Cosumnes River, and the Sacramento-San Joaquin River Delta – all waters of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from June 17, 2010 to June 17, 2015. River Watch will from time to time further update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. River Watch's northern California mailing address is 290 South Main Street, #817, Sebastopol, California 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd., #422, Los Angeles, California 90043. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

STATUTORY BACKGROUND

CWA §301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. §1342. CWA §402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting

programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA §402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA §402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a NOI. The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility, and identify and implement site-specific BMPs to reduce or prevent pollutants